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May 28, 2008

Mr. Adam Laputz
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive #200
Rancho Cordova, CA 95670-6114

Subject: Long-term Irrigated Lands Regulatory Program

Dear Mr. Laputz:

Modesto Irrigation District (Modesto ID) appreciates the opportunity to comment on the Long-term Irrigated Lands Program (ILP). Over the last five years Modesto ID has been heavily involved with the ILP by attending meetings, commenting on proposed plans and requirements, and providing RWQCB staff with tours of irrigation facilities and feedback about irrigation practices. Additionally, for the past four years Modesto ID has been performing regular water quality monitoring of its facilities under the ILP.

During this time, it has become obvious to all what a daunting task ILP staff face in trying to regulate surface water discharges from more than 5 million acres of land. Over the last five years a huge amount of time and money has been put toward collecting data and information about water quality and farming practices in the Central Valley. These efforts are just now beginning to produce results that can be interpreted and for which conclusions can be made.

Increasing the Scope

During recent scoping meetings, ILP staff discussed the possibility of including two new components in the long-term program; dry land farming/pasture and groundwater.

Dry Land Farming

Inclusion of dry land farming and/or dry pasture into the long-term ILP is problematic for a variety of reasons. The first problem is simply the amount of land that would be added to the program. Modesto ID does not have specific data on acreage of dry land farming or pastures but including those into the ILP could easily more than double the acreage of the program. If one takes a drive along Highway 49 through the foothills on the east side of the Valley or down I-5 along the west side of the Valley, you begin to get a sense of the amount of land that would have to be considered. Much of that country is grazed by cattle at various times during the year. After five years, the ILP still does not have a grip on the 5 million plus acres of irrigated lands. Doubling the size would only spread existing available resources more thinly. Resources would be best spent continuing to focus on irrigated lands which have more intensive agriculture with a greater use of pesticides and fertilizers.

A second problem would be trying to define which lands constitute dry land farming or pasture. Not all dry lands are farmed or grazed every year. Some fields may only be farmed or grazed once every couple of years. Some fields may only have a few cows for a short period of time during the year. Would National Forest lands that having cattle grazing for a few months each summer fall into the dry land farming/pasture inclusion? A great deal of Irrigated Lands Program staff time would be

spent just trying make this determination on a field by field basis. After five years, ILP staff is still trying to determine if certain irrigated lands are, or are not, dischargers.

Groundwater

The inclusion of groundwater into the Long-term ILP increases the scope and difficulty of the program to almost unimaginable proportions. Groundwater hydrology is a very complex and inexact science. Organizations such as the USGS have been performing groundwater investigations on certain groundwater basins for decades and have yet to fully define the groundwater flow paths. In the course of these studies they have spent millions of dollars trying to characterize relatively small areas. To attempt to regulate, and therefore investigate, groundwater under 5 million acres of irrigated lands, is truly an impossible task.

The regulation of groundwater under the Long-term ILP would create very complex issues of responsibility for both defining a groundwater quality problem and correcting it. Recharge to groundwater occurs from every land use type and therefore has the potential to become contaminated from any or all of those uses. If a coalition or individual was performing groundwater monitoring and found a groundwater quality problem how would it be practical for the coalition or individual to determine the source of the problem? How could they be expected to fix it?

Groundwater tends to be old, on the order of decades or centuries, and moves slowly, centimeters to meters per year. Due to this, groundwater contamination that is found today may have been caused prior to the startup of the existing farm, or by farming practices no longer in existence. An example of this is DBCP (1,2-dibromo-3-chloropropane) a soil fumigant banned in the late 1970's. Even though this fumigant has not been used for approximately 30 years, it is still commonly found in the groundwater of the Central Valley.

Due to the slow movement of groundwater there will be major problems in determining if groundwater quality is getting better due to changes made to farming practices. If it is determined that a change must be made to a farming practice it will take decades or more to determine if that practice change had any affect on groundwater quality. In the meantime expensive groundwater monitoring will continue.

There are existing groundwater programs with large datasets (USGS's NAWQA & GAMA programs as well as at least one run by DPR). Modesto ID would highly recommend that the RWQCB investigate these existing programs and determine what can be learned from those datasets before creating another costly program which may not produce positive results.

Issues of Fairness

Under the existing ILP when water quality exceedances are found, the current approach by the RWQCB staff is for agriculture to bear the burden of continued investigation until the source or sources of the exceedance are found. This is the case even when there is evidence that non-agricultural sources may be contributing to the problem. In this manner agriculture is put in the impossible position of proving itself innocent or at a minimum, spending large sums of money in a search for other "guilty" parties.

In the Central Valley of California most waterways are multiuse or multi-source. Waters enter those waterways legally or illegally, intentionally or unintentionally from urban runoff, ag runoff, treatment plant discharge, chemical spills, septic tanks, etc. just to name a few. To require agriculture to

investigate every exceedance to tease out all of these sources is patently unfair. The Long-term Program must consider involving all parties on a watershed in the monitoring program. It is not enough to put language into the program stating agriculture must include others in their monitoring program, as this again puts the onus on ag. The RWQCB must, through its regulatory authority, require other dischargers to participate.

Background Conditions

An issue that has been a particular problem under the existing ILP is dealing with background water quality that exceeds various water quality objectives (WQOs). Often these background conditions are natural or were caused by practices many decades ago. An example of the natural background conditions that exceed WQOs is saline groundwater. The WQOs for salt are an electrical conductivity of 700 uS/cm and total dissolved solids of 450 mg/L and groundwater in the Central Valley typically exceeds these values. There are multiple causes of these "elevated" levels in the groundwater but natural geology, not agriculture, is the greatest cause.

The problem with naturally saline groundwater arises when earth lined ditches intercept shallow groundwater and monitoring in that ditch or drain shows electrical conductivity or total dissolved solids levels above the WQOs. A great deal of effort and money is spent trying to explain or prove to RWQCB staff that the WQO exceedances are actually representative of natural or background conditions and nothing that is currently being done is elevating the levels nor can anything be done about them. Other examples include metals such as copper and zinc or legacy pesticides such as DDT and DBCP. A clear approach to dealing with elevated background conditions must be included in the Long-term ILP.

Irrigation Districts

Questions have been posed by RWQCB staff as to what the role of irrigation districts will be under the Long-term Program. The irrigation districts should play a two part role. The first part is monitoring for possible impacts from the various pesticides and practices utilized in the maintenance of the canals and rights of way. The second part will be that of technical support to the local coalitions, when possible. Irrigation districts often have knowledge and data regarding the hydrology, weather and water quality in the district area and can provide this information when useful to the coalitions. The irrigation districts can also share their monitoring data with the coalitions.

Irrigated Lands Program staff has suggested that irrigation districts should play a more authoritarian role in both the existing program and in the Long-term Program. Irrigation districts have unique rights and authorities according to the legislative act under which they were formed. Each irrigation district's purpose, and therefore their authority, is somewhat different. Some irrigation districts were formed to supply water, handle and control drainage water and provide other services to their members, while others were formed to simply supply water. In the case of the former, they may have much more authority to control activities by their members than does the latter. If the Long-term Program ends up having requirements that irrigation districts must require farmers to institute certain practices or discontinue others, many irrigation districts will not be able to comply due to a lack of authority.

Discharges into irrigation district canals or drains are covered under existing regulatory programs. Urban storm water is regulated under the Storm Water NPDES permit and agricultural drainage is covered under the ILP. The discharges are the responsibility of the discharger as they are occurring into a Water of the State and therefore the regulatory authority is the RWQCB not the irrigation district.

If you have any questions or concerns regarding this document, please contact me at (209)-526-7570 or by e-mail at michaeln@mid.org

Sincerely,

A handwritten signature in black ink, appearing to read "Michael J. Niemi", with a stylized, flowing script.

Michael J. Niemi
Water Resources Specialist
Modesto Irrigation District